IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

THURSDAY, THE 28TH JUNE, 2007 / 7TH ASHADHA, 1929

WP(C).No. 19839 of 2007(J)

(WC.NO. 88/1998 of W.C.C.,KOZHIKODE)

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PETITIONER:

I.G.SIVADAS, S/O.GOVINDAN, AYANIKKAL VEEDU, THIRTHALUR P.O., THRISSUR.

BY ADV. SRI.M.RAMESH CHANDER

RESPONDENTS:

1. MEKUTH SAROJINI, W/O.LATE VELU, MEKUTH HOUSE, OTHAI, (VIA) EDAVANNA.

2. M.GEETHA, D/O.LATE VELU, -DO- -DO-

3. M.BABY, D/O.LATE VELU -DO- -DO-

4. M.SABITHA, D/O.LATE VELU -DO- -DO-

5. M.LIJI, D/O.LATE VELU, -DO- -DO-

6. THE COMMISSIONER FOR WORKMEN'S COMPENSATION (DEPUTY LABOUR COMMISSIONER), KOZHIKODE.

R6 BY GOVT. PLEADER SRI.I.V.PRAMOD.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 28/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

S. SIRI JAGAN, J.

WP(C) NO. 19839 OF 2007 - J

Dated this the 28th day of June, 2007

J U D G M E N T

The petitioner is the employer in W.C.No.88/98 before the Workmen's Compensation Commissioner (Deputy Labour Commissioner), Kozhikode. Respondents 1 to 5 filed an application for compensation for the death of Velu in 1998. The petitioner entered appearance through counsel and filed a written statement. However, the petitioner did not appear before the Commissioner at the time of evidence and therefore, the Workmen's Compensation Commissioner, on the basis of the evidence of the applicants, awarded a compensation of Rs.1,66,290/- with interest at 12% per annum from the date of accident to respondents 1 to 5. That order was dated 4.1.2006. On 18.6.2006, the petitioner filed an application to set aside the ex parte order and to rehear the case. That was rejected by Ext.P3 order dated 3.1.2007. Now the Workmen's Compensation Commissioner has issued Ext.P4 show cause notice to the petitioner directing him to show

cause why revenue recovery steps for realisation of the award amount should not be initiated against the petitioner. The petitioner's contention is that he could not take part in the proceedings before the Commissioner only because of the death of the counsel. Since for a long time the petitioner did not receive any information from the counsel, he was under the impression that the case was decided in his favour. That is why he did not enquire about the matter further, is the contention raised. The petitioner therefore seeks quashing of Exts.P1 and P3 and a direction to the Workmen's Compensation Commissioner to rehear the workmen's compensation case.

2. I have heard learned counsel for the petitioner. The Workmen's Compensation Case was filed in 1998. The award was passed only in January 2006. I do not think that it would be in the interest of justice to drag the legal heirs of the deceased workman to this Court and the Workmen's Compensation Court again especially since there is no dispute regarding the fact

that the deceased Velu was an employee of the petitioner. Their only contention was that Velu died only because of his own negligence and disobedience of directions of the petitioner. That is a matter which the petitioner should have proved by evidence before the Commissioner. Simply because the petitioner did not get communication from his lawyer, he cannot assume that the court has decided in his favour especially since he is very well aware of the fact that he had not adduced any evidence before the Commissioner in support of his case. Without such evidence, it was idle for him to assume that the court would have decided the case in his favour. Therefore, I do not find any merits in the reasons stated by the petitioner for non-appearance before the Commissioner. In the above circumstances, I am not inclined to entertain this writ petition. Accordingly, the same is dismissed.

3. The learned counsel for the petitioner seeks some time to pay off the amounts in instalments. Taking into account the facts and circumstances of the case, I

direct the sixth respondent to permit the petitioner to pay the amounts due in six equal monthly instalments starting from 2.7.2007. Every subsequent instalment shall be paid on the first working day of every subsequent month. If the petitioner pays the instalments on the due date, further proceedings for recovery of the amounts due shall be kept in abeyance. However, if the petitioner fails to remit any one instalment, the sixth respondent shall immediately send requisition for recovery to the revenue recovery authorities, promptly.

S. SIRI JAGAN,
Judge

Mbs/

S.SIRI JAGAN, J

W.P.(C) NO. OF 2001

J U D G M E N T

DATED:01-06-2007